

ESTTA Tracking number: **ESTTA191714**

Filing date: **02/08/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

| | | | |
|---------|-------------------------------------------------------------------|-------------|---------|
| Name | Arion Perfume & Beauty, Inc. | | |
| Entity | Corporation | Citizenship | Florida |
| Address | 976 Associate Dr. Suite 100 Schertz, TX 78514 UNITED STATES | | |

| | |
|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Attorney information | Mark A. Kammer Kammer Browning PLLC 7700 Broadway Suite 202 San Antonio, TX 78209 UNITED STATES makammer@kammerbrowning.com Phone:2108320900 |
|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|

Registration Subject to Cancellation

| | | | |
|-----------------|--------------------------------------------------------------------------------|-------------------|------------|
| Registration No | 2770412 | Registration date | 09/30/2003 |
| Registrant | FORD MOTOR COMPANY The American Road Dearborn, MI 48121 UNITED STATES | | |

Goods/Services Subject to Cancellation

Class 003. First Use: 1976/12/31 First Use In Commerce: 1976/12/31
All goods and services in the class are cancelled, namely: Fragrances, namely cologne, perfume, toilet water, and aftershave lotion

Grounds for Cancellation

| | |
|-------------------------------------------------|---------------------------------------------|
| <i>Torres v. Cantine Torresella S.r.l.Fraud</i> | 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986) |
| Abandonment | Trademark Act section 14 |
| Priority and likelihood of confusion | Trademark Act section 2(d) |

Marks Cited by Petitioner as Basis for Cancellation

| | | | |
|---------------------------------------|-------------------------------------------------------|------------------|------|
| U.S. Application/ Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | MUSTANG | | |
| Goods/Services | Fragrances, namely cologne, perfume, and toilet water | | |

| | | | |
|-------------------|------|------------------|------|
| U.S. Application/ | NONE | Application Date | NONE |
|-------------------|------|------------------|------|

| | | | |
|-------------------|-------------------------------------------------------|--|--|
| Registration No. | | | |
| Registration Date | NONE | | |
| Word Mark | MUSTANG NIGHT | | |
| Goods/Services | Fragrances, namely cologne, perfume, and toilet water | | |

| | | | |
|---------------------------------------|-------------------------------------------------------|------------------|------|
| U.S. Application/ Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | MUSTANG PACE | | |
| Goods/Services | Fragrances, namely cologne, perfume, and toilet water | | |

| | | | |
|---------------------------------------|-------------------------------------------------------|------------------|------|
| U.S. Application/ Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | MUSTANG MIDNIGHT | | |
| Goods/Services | Fragrances, namely cologne, perfume, and toilet water | | |

| | |
|-------------|---------------------------------------------------|
| Attachments | Petition_to_Cancel.pdf (5 pages)(108675 bytes) |
|-------------|---------------------------------------------------|

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|-----------------|
| Signature | /makammer34197/ |
| Name | Mark A. Kammer |
| Date | 02/08/2008 |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2,770,412
Issued on September 30, 2003

ARION PERFUME & BEAUTY, INC.

Petitioner,

v.

FORD MOTOR COMPANY,

Respondent.

Cancellation No: _____

PETITION TO CANCEL

Petitioner (Arion Perfume & Beauty, Inc.) believes that it will be damaged by the continued registration of the mark shown in Registration No. 2,770,412 and hereby petitions to cancel the same. As grounds for its petition, Petitioner alleges as follows:

1. Petitioner is a corporation organized and existing under the laws of the State of Florida, doing business as Dorall Collection, with offices in San Antonio, Texas.
2. Upon information and belief, Respondent (Ford Motor Company) is a corporation organized and existing under the laws of the State of Delaware, with an address of record at The American Road, Dearborn, Michigan 48126.
3. Petitioner markets a line of fragrance products in the United States bearing its MUSTANG trademark. These products are marketed under trademarks that include MUSTANG, MUSTANG NIGHT, MUSTANG PACE, and MUSTANG MIDNIGHT. These products may be

generally categorized as fragrance products for men and women. Petitioner has been marketing a number of these products the United States since at least as early as February 2002.

4. Upon information and belief, Respondent produces and distributes in the United States various motor vehicles, including vehicles under a MUSTANG trademark.

5. Respondent filed a U.S. Trademark Application, Serial No. 75/035,043 on December 20, 1995, for the mark MUSTANG for use in conjunction with goods and services therein described as *fragrances, namely cologne, perfume, toilet water, and aftershave lotion*. This Application was filed alleging an Intent to Use under Section 1(b) and received a Notice of Allowance on August 20, 1996. The Respondent (Applicant), however, abandoned this Application on August 20, 1999.

6. Respondent filed a further U.S. Trademark Application, Serial No. 75/781,113 on August 20, 1999, for the mark MUSTANG, again for use in conjunction with goods and services identified as *fragrances, namely cologne, perfume, toilet water, and aftershave lotion*. This Application was also filed alleging an Intent to Use under Section 1(b). The Respondent (Applicant) received a Notice of Allowance on June 13, 2000, but abandoned the Application on December 14, 2000.

7. Respondent filed a third U.S. Trademark Application Serial No. 78/150,685 on August 5, 2002, for the MUSTANG trademark, again alleging an Intent to Use the mark and identifying goods and services as *fragrances, namely cologne, perfume, toilet water, and aftershave lotion*. This Application matured into the Registration that is the subject of this Cancellation Action. A Notice of Allowance in the case was issued on May 20, 2003, and a Statement of Use was received on May 30, 2003.

8. U.S. Trademark Registration No. 2,770,412 for the mark MUSTANG for *fragrances, namely cologne, perfume, toilet water, and aftershave lotion* (the '412 Registration) issued to Respondent on September 30, 2003.

FIRST CLAIM FOR RELIEF

9. Petitioner repeats and re-alleges the allegations in preceding paragraphs 1 – 8, inclusive, as if fully set forth herein.

10. Upon information and belief, Respondent has entered into a licensing agreement with Aramis and Designer Fragrances, a division of a subsidiary of the Estée Lauder Companies, Inc. to grant use of its MUSTANG trademark to Estée Lauder in conjunction with the manufacture, sale, and marketing of a men's cologne product.

11. Upon information and belief, these Estée Lauder products went on sale in the United States in 2007, and were introduced as a “new fragrance for men”. Information regarding the introduction of this new product is presented on the Internet at www.mustangformen.com, which identifies the trademark MUSTANG as being owned and licensed by Ford Motor Company.

12. The '412 Registration alleges dates of first use anywhere and in interstate commerce as December 31, 1976. The specimen of use submitted to support the Registration is a photographic image of a fragrance bottle in the shape of a 1964 Mustang Motor Vehicle as well as box packaging also presenting an image of the 1964 Mustang Motor Vehicle with the words '64 MUSTANG shown on one side of the product packaging.

13. The trademark specimen used to support the '412 Registration is an insufficient indication of the use of the MUSTANG term as a trademark in conjunction with *fragrance*

products by Ford Motor Company. The reference to a '64 Mustang on the product packaging does no more than refer the customer to the shape of the container for the Avon fragrance product. This subject matter should have been rejected as a trademark because as used on the specimen submitted the term did not function as a trademark as required by §§ 1, 2, and 45 of the Trademark Act (15 U.S.C. §§ 1051, 1052, and 1127).

14. Respondent therefore failed to provide an adequate trademark specimen to support its allegation of use in the '412 Registration, and further misrepresented the ongoing and continuous use of the trademark in interstate commerce from its earliest alleged dates of first use.

SECOND CLAIM FOR RELIEF

15. Petitioner repeats and re-alleges the allegations in preceding paragraphs 1 – 14, inclusive, as if fully set forth herein.

16. There is no evidence of the use of the MUSTANG term by Respondent as a trademark for *fragrance products* in the period of time from the dates first alleged for use until the point in time where a licensing agreement appears to have been entered into between Respondent and Estée Lauder.

17. In the alternative therefore, if Respondent's initial use of the term "Mustang" is deemed effective for purposes of trademark use, Respondent has abandoned such use in the intervening period of time since use was allegedly initiated, until the year 2007 when products by Estée Lauder were placed on the market under a licensing agreement.

18. Petitioner has continuously used its MUSTANG trademark in conjunction with fragrance products since at least as early as February 2002.

19. Petitioner will be damaged by the continued registration of the mark shown in the '412 Registration because such continued registration will give Respondent prima facie evidence of proprietary rights in the MUSTANG term in a manner inconsistent with and in derogation of Petitioner's right to continue to use term to identify its product lines.


WHEREFORE, Petitioner, Arion Perfume & Beauty, Inc. prays for judgment granting this petition and canceling U.S. Registration No. 2,770,412.

Please direct all correspondence and communications in this cancellation action to the undersigned.

Respectfully submitted,

Dated: February 8, 2008

Kammer Browning PLLC

By: 
Mark A. Kammer (Reg. No. 34,197)
Attorneys for Petitioner

7700 Broadway, Suite 202
San Antonio, Texas 78209
Telephone: 210-832-0900
Facsimile: 210-832-0901
Email: makammer@kammerbrowning.com